

## Briefing for the Public Petitions Committee

**Petition Number:** [PE01855](#)

**Main Petitioner:** Claire Mitchell QC

**Subject:** Pardon and memorialise those convicted under the Witchcraft Act 1563

Calls on the Scottish Parliament to urge the Scottish Government to pardon, apologise and create a national monument to memorialise those people in Scotland accused and convicted as witches under the Witchcraft Act 1563.

### Background

The following information has been taken from '[The Survey of Scottish Witchcraft 1563 - 1736](#)' ("the Survey"<sup>1</sup>).

The Survey identified a total number of 3,837 people who were accused of witchcraft in Scotland between 1563 and 1736. The authors state that older accounts of the subject tended to produce much higher figures, such as 4,500 or 30,000, but that they are based on speculation rather than detailed research.

Of the 3,837 people who are on the survey database, 3,212 are named and there are a further 625 unnamed people or groups. Of the 3,212 named individuals, the sentence given after trial is only known in 305 cases: 205 were to be executed; 52 were acquitted; 27 were banished; 11 were declared fugitive; 6 were excommunicated; 2 were "put to the horn" (outlawed); 1 person was to be kept in prison; and 1 person was to be publicly humiliated. In addition, a further 98 were recorded as having fled from prosecution. This would suggest that 67% of those tried were sentenced to death.

However, the authors state that this figure is probably not very accurate. It is based on only 305 cases - less than a tenth of the 3,212 people known to have been accused.

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<sup>1</sup> Survey of Scottish Witchcraft, 1563 – 1736. Goodare, Julian; Yeoman, Louise; Martin, Lauren; Miller, Joyce. (2010). Survey of Scottish Witchcraft, 1563 - 1736, [Dataset]. University of Edinburgh. School of History, Classics and Archaeology.

A number of courts were involved in the trials of witches. Local church courts had no criminal jurisdiction and would pass on complaints about witchcraft to one of the following bodies:

- Privy Council, committee of estates or parliament – these bodies did not hold trials but would issue “commissions” authorising people to hold trials
- Court of Justiciary – the highest criminal court situated in Edinburgh which tried numerous witches
- Circuit courts – travelling versions of the Court of Justiciary which often tried witches in the locations at which they were held
- Local criminal courts held under commissions of justiciary (see above) – these were usually ad hoc courts trying one person at a time. Most Scottish witches were tried in such courts.

The Survey states that four types of evidence were used in the trials which took place:

- Confession evidence – this was often extracted under torture. Typically, if a suspect was interrogated they would be expected to confess to making a pact with the Devil and to harming their neighbours by maleficent witchcraft, though one or other was often omitted.
- Neighbours’ testimony – statements by neighbours usually ignored the Devil. They usually described quarrels with the suspect followed by misfortune they had suffered.
- Other witches’ testimony – when witches were interrogated they were sometimes asked about their accomplices. The people they named could then be arrested and interrogated. This was an effective way of increasing the number of suspects; it seems mainly to have happened during short periods of intense witch-hunting.
- The Devil’s mark – the Devil was believed to mark his followers at the time they made a pact with him, as a parody of Christian baptism. A physical search of the suspect’s body could find this mark – either a visible body blemish or an insensitive spot. The insensitive spot was discovered by pricking with pins, sometimes by the interrogators themselves and sometimes by itinerant professional “witch-prickers” (of whom about 10 are known to have acted in Scotland).

The Survey states that the lawyers in charge of the central courts gradually became less convinced that the usual kinds of evidence could prove guilt. The validity of confessions made under torture was questioned and pricking for the Devil’s mark came to be seen as fraudulent.

The Survey goes on to say that after the so-called Glorious Revolution<sup>2</sup>, the state became more secular and no longer needed to prove its godliness by executing witches.

The Scottish Witchcraft Act, entitled, [Anentis Witchcrafts](#), which was passed in the Parliament of Scotland in the Ninth Parliament of Queen Mary in 1563, and which forms the basis of the present petition, was repealed in 1735 by the introduction of the Witchcraft Act 1735 which was, in turn, repealed by the Fraudulent Mediums Act 1951.

### **Scottish Parliament action**

A similar issue was previously considered in 2008, by the then Public Petitions Committee (“the Committee”) in response to petition [PE1128](#) which was lodged by Ewan Irvine. That petition called on the Parliament to urge the Scottish Government to take necessary action to grant a posthumous pardon to all persons convicted in Scotland under all witchcraft legislation.

Following consideration of that petition in its [deliberations on 4 March](#), the Committee agreed to write to the Scottish Government for its view on whether such a pardon could be granted.

[In August 2008, the Scottish Government wrote to the Committee](#) setting out, amongst other things, how the Royal Prerogative of Mercy (RPM) works, and some of the factors which would have a bearing on the granting of a posthumous Free Pardon. Essentially, the Scottish Government did not consider that the use of the RPM would be appropriate in this case.

After considering the Scottish Government’s response, the Committee took the decision to close petition PE1128 at its meeting on 9 September 2008.

With regard to the current petition, the petitioner states that the Parliament has recently set a precedent for righting historic wrongs and pardoning those who were previously convicted of offences. The petitioner points to the passing of the [Historical Sexual Offences \(Pardons and Disregards\) \(Scotland\) Act 2018](#).

### **Scottish Government action**

As set out above, the Scottish Government has previously responded on a similar issue which was raised at the Public Petitions Committee in 2008.

**Graham Ross**  
**Senior Researcher**  
**1 March 2021**

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<sup>2</sup> The Glorious Revolution took place from 1688 to 1689 in England. It involved the overthrow of the Catholic King James II, who was replaced by his Protestant daughter Mary and her Dutch husband, William of Orange.

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